

T-LANE FARM

GROUND LEASE

TOWN OF CHILMARK and

MARTHA'S VINEYARD LAND BANK COMMISSION

THIS LEASE (this "Lease") made and entered into this _____ day of _____, 20__, by and between The Town of Chilmark, unless otherwise, operating through the Board of Selectmen, ("Town"), having an address of P.O. Box 119, Chilmark, MA 02535; the Martha's Vineyard Land Bank Commission, a corporate body politic, with a principal place of business at 167 Main Street, P.O. Box 2057, Edgartown, Massachusetts 02539, ("Land Bank") (or collectively with the Town, "Lessor"), and _____ ("Lessee") having an address of _____.

- Article 1: Letters of Stipulation and Acknowledgment
- Article 2: Demise of Leased Premises
- Article 3: Duration of Lease
- Article 4: Use of Leased Premises
- Article 5: Ground Lease Fee
- Article 6: Taxes and Assessments
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- Article 9: Liability, Insurance, Damage and Destruction, Eminent Domain
- Article 10: Transfer, Sale, or Disposition of Improvements
- Article 11: Assignment and Sublease
- Article 12: Default
- Article 13: General Provisions

The following Exhibits are attached hereto and made a part of this Lease:

- Exhibit A - Town Deed
- Exhibit B - Land Bank Deed
- Exhibit C - Intermunicipal Agreement
- Exhibit D - Intermunicipal Agreement -Farm Plan
- Exhibit E - Letter(s) of Stipulation of Lessee
- Exhibit F - Letter of Acknowledgment of Lessee's Attorney
- Exhibit G - Leased Premises (Legal Description of Property)
- Exhibit H - Bill of Sale and Deed
- Exhibit I - Required Renovations
- Exhibit J - Permitted Mortgages
- Exhibit K - First Refusal

RECITALS

WHEREAS, the Town purchased the T-Lane Farm ("Farm") pursuant to a deed dated June 14, 2001 and recorded in the Dukes County Registry of Deeds in Book 837, Page 682, which deed is attached hereto as Exhibit "A" (the "Town Deed") (the "Leased Premises"); and

WHEREAS, the Land Bank purchased land surrounding the Farm pursuant to a deed dated June 14, 2001 and recorded in the Dukes County Registry of Deeds in Book 837, Page 677, which deed is attached hereto as Exhibit "B" (the "Land Bank Deed"); and

WHEREAS, the Town and the Land Bank entered into an Intermunicipal Agreement, dated May 7, 2001, attached hereto as Exhibit "C" (the "Intermunicipal Agreement"), regarding each party's responsibilities and privileges regarding the land described in the above-referenced deeds, which land was purchased by the Town and the Land Bank for the dual purposes of restoring the Farm as a working farm, to be owned by the public and leased to a private farmer, and conservation;

WHEREAS, the Chilmark Board of Selectmen ("Selectmen") have appointed a Farm Committee, in accordance with the Intermunicipal Agreement; and

WHEREAS, the Farm Committee has drafted a Farm Plan, approved by the Selectmen, the Land Bank's Chilmark Town Advisory Board (the "Advisory Board") and the Land Bank, in the form of an Intermunicipal Agreement, dated _____, 20__, which is attached hereto as Exhibit "D" ("Intermunicipal Agreement - Farm Plan" or "Farm Plan"), as required by the Intermunicipal Agreement; and

WHEREAS, the Farm Plan provides, in part, a process for soliciting and selecting a farmer to lease the Leased Premises described in this Lease; and

WHEREAS, Lessee has been selected by the Selectmen and the Advisory Board, as the candidate who is best suited to farming the Leased Premises in a productive and presentable manner and who will practice sound soil conservation and enhancement techniques, as required by the Farm Plan (an "Eligible Purchaser");

WHEREAS, Lessee shares the purposes and goals of the Lessor and has agreed to enter into this Lease not only to obtain those benefits to which Lessee is entitled under this Lease, but also to further the purposes of the Lessor; and

WHEREAS, Lessee recognizes the special nature of the terms and conditions of this Lease, and, with the independent and informed advice of legal counsel, freely accepts these terms and conditions, including those terms and conditions that may affect the marketing and resale price of any Improvements (as such term is hereinafter defined in Section 7.1), on the Leased Premises; and

WHEREAS, it is mutually understood and accepted by the parties hereto that the terms and conditions of this Lease will further their shared goals over an extended period of time and through a succession of owners.

NOW, THEREFORE, in consideration of the foregoing recitals, of mutual promises of the Lessor and Lessee, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1: Letters of Stipulation and Acknowledgment

Attached and made part of this Lease by reference are Exhibit "E," Letter of Stipulation of Lessee, and Exhibit "F," Letter of Acknowledgment of Lessee's Attorney, setting forth their respective review and understanding of this Lease (in particular, Article 10, regarding the transfer, sale, or disposition of the Improvements) and related documents for this transaction.

ARTICLE 2: Demise of Leased Premises

2.1 PREMISES: The Lessor, in consideration of the rents reserved and the terms and conditions of this Lease, does hereby demise and leave unto Lessee, and Lessee does hereby take and hire from the Lessor, the property (referred to in this Lease as the "Leased Premises") described in the attached Exhibit "G," Leased Premises.

Lessee accepts the Leased Premises in their condition "as is" as of the execution of this Lease.

ARTICLE 3: Duration of Lease

3.1 TERM: The term of this Lease shall be ninety-nine (99) years, commencing on the ___ day of _____, 20___, and terminating on the _____ day of _____, 20___, unless terminated sooner as provided below.

ARTICLE 4: Use of Leased Premises

4.1 AGRICULTURAL USE ONLY: Lessee shall use, and shall cause all occupants to use, the Leased Premises and the Improvements thereon for farming purposes, and for any incidental activities related thereto, that are permitted by applicable law, by-laws, guidelines and regulations, including but not limited to those referenced in Article 4.2 below.

4.2 RESPONSIBLE USE AND COMPLIANCE WITH LAW: Lessee shall use the Leased Premises in a manner so as not to cause harm to others or create any nuisances, public or private; and shall dispose of any and all waste in a safe and sanitary manner. Lessee shall maintain the Leased Premises and Improvements in good, safe, and habitable condition in all respects, in full compliance with all applicable laws and regulations, and in such condition as is required to maintain the insurance coverage required by Section

9.4 of this Lease. In furtherance and not in limitation of the foregoing, Lessee shall comply with any and all applicable requirements contained in (a) the Town Deed, attached hereto as Exhibit "A;" (b) the Land Bank Deed, attached hereto as Exhibit "B;" (c) the Intermunicipal Agreement, attached hereto as Exhibit "C;" (d) the Farm Plan, attached hereto as Exhibit "D;" ((a) – (d) above are collectively referred to as the "Farm Governing Documents"); (e) the Town of Chilmark Zoning By-Laws; and (f) any homeowner's or similar association governing the Leased Premises and/or the roads or ways adjacent thereto, all as in effect as of the date of the commencement of this Lease and as may be amended during the term hereof.

4.3 RESPONSIBLE FOR OTHERS: Lessee shall be responsible for the use of the Leased Premises by anyone using the Leased Premises with Lessee's consent.

4.4 OCCUPANCY: Lessee shall occupy the Leased Premises as his or her primary residence for at least eleven (11) months of each year of this Lease, unless otherwise agreed to by the Town, acting through the Farm Committee, except for Permitted Mortgagees who are temporarily holding title to the Leased Premises pursuant to the terms of this Lease.

4.5 INSPECTION: The Town may inspect any portion of the Leased Premises except the interior(s) of Lessee's Improvements, at any reasonable time, upon at least forty-eight (48) hours' oral notice to Lessee. In the event of emergency, Lessor may inspect any portion of the Leased Premises except the interior(s) of Lessee's Improvements without notice provided Lessor shall have made reasonable efforts to give advance notice to Lessee.

4.6 LESSEE'S RIGHT TO QUIET ENJOYMENT: Lessee, upon observing and keeping all covenants, warranties, agreements and conditions of this Lease on his or her part to be kept, shall have the right to undisturbed enjoyment of the Leased Premises.

ARTICLE 5: Ground Lease Fee

5.1 GROUND LEASE FEE: In consideration of the possession, continued use, and occupancy of the Leased Premises, Lessee shall pay to the Town the Ground Lease fee of \$ _____ dollars.

5.2 PAYMENT OF GROUND LEASE FEE: The Ground Lease Fee shall be payable to the Town, at the address specified in this Lease, on the day of the execution of this Lease.

ARTICLE 6: Taxes and Assessments

6.1 TAXES AND ASSESSMENTS: Lessee shall be responsible for payment of all taxes and governmental assessments that relate to the Improvements on the Leased Premises. Lessee shall also pay directly, when due, all other service bills, utility charges, or other governmental assessments charged against the Leased Premises.

6.2 LESSEE'S RIGHT TO CONTEST: Lessee shall have the right to contest the amount or validity of any taxes relating to the Improvements on the Leased Premises. All costs and expenses of such proceedings shall be paid by Lessee.

ARTICLE 7: Improvements

7.1 OWNERSHIP: It is agreed that all buildings, structures, fixtures, and other Improvements purchased by Lessee or constructed or placed by Lessee on any part of the Leased Premises at any time during the term of this Lease (the "Improvements") shall be property of Lessee. Title to such Improvements shall be and remain vested in Lessee. However, Lessee's exercise of the rights of ownership is subject to the provisions of this Lease, including but not limited to provisions regarding the disposition of Improvements by Lessee and the Town's option to purchase the Improvements, as provided in Section 10.5 below. In addition, Lessee shall not sever or move the Improvements from the Land.

7.2 PURCHASE OF IMPROVEMENTS BY LESSEE: Lessee is simultaneously purchasing the Improvements located on the Leased Premises and described in the Bill of Sale and Deed, for consideration of \$_____ (the "Improvements Purchase Price"), the form of which is annexed to this Lease as Exhibit "E."

7.3 ALTERATION AND ADDITIONS: Any construction in connection with any Improvement is subject to the following conditions: (a) all costs shall be borne and paid for by Lessee; (b) all construction shall be performed in a workerlike manner and shall comply with the Farm Governing Documents and all applicable laws and regulations; (c) all construction shall be consistent with the permitted uses set forth in Article 4; (d) all alterations and additions intended to qualify for Added Value (as such term is defined in Section 10.10 below), shall not be constructed without prior written approval of the Farm Committee and the Selectmen, in accordance with the following paragraph:

If Lessee wishes to undertake construction of an alteration or addition (the "Alteration/Addition") with the intention of qualifying for "Added Value" as such term is defined in Section 10.10 below, Lessee shall, prior to undertaking the Alteration/Addition, submit to the Farm Committee a written request for a confirmation that the Alteration/Addition will qualify for Added Value. Such request shall include a description of the proposed Alteration/Addition and reasonably detailed drawings thereof. The Farm Committee may request additional information if it finds such information will be necessary for a reasonable determination. The Farm Committee, with approval of the Selectmen, may, at its sole discretion, give or refuse to give a conditional confirmation that the Alteration/Addition will qualify for Added Value. Any conditional confirmation shall become a final confirmation only upon Lessee's delivery to the Town of all occupancy permits or other evidence of construction completion. Upon delivery thereof, the Town shall issue a "Certificate of Added Value" and shall give Lessee one copy of such Certificate, which Lessee shall record with the Dukes County Registry of Deeds and the Town shall file another copy of such Certificate in its permanent records.

7.4 INITIAL RENOVATIONS BY LESSEE: Lessee agrees to cause those renovations described on Exhibit "I," attached hereto ("Renovations"), to be commenced promptly upon Lessee's purchase of the Improvements and to be diligently completed. The Renovations shall be performed in a good and workerlike manner, in compliance with all applicable laws, rules and regulations, and in compliance with the Farm Governing Documents. Failure to comply with the provisions above may, at the discretion of the Farm Committee, cause this Lease to immediately terminate, and, in that event, said Leased Premises shall be awarded to a new Eligible Purchaser selected pursuant to the Farm Plan. Such new Eligible Purchaser shall pay the appraised value of the structurally acceptable improvements to the Leased Premises, or the Alternative Maximum (defined in Section 10.10.1) to the lapsed Eligible Purchaser.

The cost of the Renovations shall be approved by the Farm Committee and shall be added to the Improvements Purchase Price (the "Total Development Value") for purposes of calculating the Formula Price (as defined in Section 10.8), pursuant to the terms of Section 10.10. After determining the amount of the Total Development Value in accordance with this Section, the Town, acting through the Farm Committee, shall deliver a "Certificate of Total Development Value" to Lessee for use as necessary in calculating the aforesaid Formula Price, which Lessee shall record at the Dukes County Registry of Deeds, and the Town shall file another copy of such Certificate in its permanent records.

7.5 PROHIBITION OF LIENS: Except for Permitted Mortgages, as defined herein, no lien of any type shall attach to the Lessor's title to the Land or to the Lessor's interest in the Leased Premises or to any other property owned by the Lessor. Lessee shall not permit any statutory or similar lien to be filed against the Leased Premises, the Improvements, or any interest of the Lessor or Lessee that remains more than sixty (60) days after it has been filed. Lessee shall cause any such lien to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction, or as otherwise permitted by law. If Lessee fails to cause such lien to be discharged within the 60-day period, then, in addition to any other right or remedy, the Lessor may, but shall not be obligated to, discharge the lien by paying the amount in question. Lessee may, at Lessee's expense, contest the validity of any such asserted lien, provided Lessee has furnished a bond in an amount sufficient to release the Leased Premises from such lien. Any amounts paid by the Lessor to discharge such liens shall be deemed to be an additional Ground Lease Fee payable by Lessee upon demand.

7.6 MAINTENANCE AND SERVICES: Lessee shall, at Lessee's sole expense, maintain the Leased Premises and all Improvements as required by Section 4.2 above. The Lessor shall not be required to furnish any services or facilities, including but not limited to heat, electricity, air conditioning, septic or water, or to make any repairs to the Leased Premises or Improvements, and Lessee hereby assumes the sole responsibility for furnishing all services or facilities.

7.7 DISPOSITION OF IMPROVEMENTS UPON EXPIRATION OF LEASE TERM: Upon the expiration of the term of this Lease or if it be sooner terminated in accordance

with this Lease, Lessee shall surrender the Improvements together with the Leased Premises to the Lessor. Ownership of the Improvements shall thereupon revert to the Town, subject to the rights of a Permitted Mortgagee and its Permitted Mortgage as provided herein, provided, however, that the Town shall promptly pay to Lessee (subject as aforesaid to the rights of a Permitted Mortgagee and its Permitted Mortgage) as consideration for the Improvements an amount equal to the Town's Purchase Option Price calculated in accordance with Article 10 below, as of the time of reversion of ownership, less the total amount of any unpaid Ground Lease Fee including any charges that may have been added to the Ground Lease Fee in accordance with this Lease.

ARTICLE 8: Financing

8.1 PERMITTED MORTGAGE: Lessee may mortgage the Leased Premises or grant a security interest in the Improvements, either for the purchase or refinance of Improvements located thereon, or for the Renovations or Alteration/Addition thereof, only (1) with the prior written consent of the Town, acting through the Farm Committee, with the approval of the Selectmen; (2) pursuant to a mortgage or other security instrument satisfying all of the requirements for a "Permitted Mortgage," as hereinafter defined in the attached Exhibit "J;" (3) and only in an amount not greater than the least of (a) the value of the Improvements as determined by an Appraisal conducted by a duly licensed appraiser in connection with said financing, or (b) the price calculated in connection with the formula described in Section 10.10 below (the "Formula Price"), or (c) the "Alternative Maximum," as defined in Paragraph 10.10.1 below; and (4) and only if the lender and Lessee execute a Permitted Mortgage Agreement at the time of the loan closing, which agreement incorporates the terms and provisions of Exhibit "J." Not less than thirty (30) days (or such shorter period as may be approved by the Town) prior to the date on which Lessee requests the Town's consent to a mortgage or other security instrument to be effective, Lessee shall furnish to the Town copies of every document to be executed in connection with the transaction represented by such mortgage and/or security instrument. The Town may choose to consent to any mortgage and/or security interest, and in so doing shall designate such mortgage and/or security interest as a "Permitted Mortgage." However, the Town shall consent to a mortgage and/or security interest only if (a) at the time such copies of documents are submitted and at the time proposed by Lessee for the execution of such documents, no default under this Lease is then outstanding; (b) the mortgage and/or security interest so submitted is a Permitted Mortgage as defined in the attached Exhibit J; and (c) the mortgage and/or security interest complies with this Article 8. Lessee shall pay to the Town at the Town's option, as additional Ground Lease Fee, all fees, costs, and expenses, including, without limitation, reasonable attorneys' fees, incurred by the Town in connection with any Permitted Mortgage.

8.2 RIGHTS OF PERMITTED MORTGAGEE: Any holder of a Permitted Mortgage ("Permitted Mortgagee") shall without requirement of consent by the Town have the rights identified and defined in Section B of the attached Exhibit "J."

8.3 REMOVAL OF CERTAIN PROVISIONS PURSUANT TO FORECLOSURE: In the event of foreclosure sale by a Permitted Mortgagee or the delivery of a bill of sale and deed to a Permitted Mortgagee in lieu of foreclosure in accordance with the provisions of this Lease, at the election of the Permitted Mortgagee, and provided that the Permitted Mortgagee has complied with the terms of Exhibit "J," attached hereto and incorporated herein by reference, the provisions of Article 10, Sections 10.1 through 10.12, inclusive, shall be deleted and thereupon be of no further force or effect as to only so much of the Security (as such term is defined in the attached Exhibit "J"), so foreclosed upon or transferred.

8.4 TOWN'S RIGHT TO PROCEEDS IN EXCESS OF PURCHASE OPTION PRICE: The parties recognize that it would be contrary to the fundamental concept of this Lease and an incentive to abuse Lessee's authorization to encumber its leasehold interest with a Permitted Mortgage if Lessee could realize more than the Purchase Option Price as the result of any foreclosure of any mortgage. Accordingly, Lessee hereby irrevocably assigns to the Town any and all net proceeds of sale of the Improvements remaining after payment of costs of foreclosure and satisfaction of the lien of any Permitted Mortgagee which would otherwise have been payable to Lessee, to the extent such net proceeds exceed the net proceeds that Lessee would have received had the property been sold for the Purchase Option Price established in Article 10 of this Lease, and authorizes and instructs the Permitted Mortgagee or any party conducting any sale to pay the amount of said excess proceeds directly to the Town. In the event that, for any reason, such excess proceeds are paid to Lessee, Lessee hereby agrees to promptly pay the amount of such excess proceeds to the Town.

8.5 AMENDMENTS SUBJECT TO APPROVAL BY PERMITTED MORTGAGEE: Any amendments to this Lease shall be subject to the written approval of the Permitted Mortgagee, which approval shall not be unreasonably withheld or delayed. The passage of thirty (30) days after submittal to Permitted Mortgagee of a proposed amendment without approval or disapproval by Permitted Mortgagee shall be deemed approval thereof.

ARTICLE 9: Liability, Insurance, Damage and Destruction, Eminent Domain

9.1 LESSEE'S LIABILITY: Lessee assumes sole responsibility and liability to all persons and authorities related to its possession, occupancy, and use of the Leased Premises and/or the Improvements.

9.2 INDEMNIFICATION OF LESSOR: Lessee shall defend, indemnify, and hold the Lessor harmless against all liability and claims of liability for injury or damage to person or property from any cause on or about the Leased Premises. To the maximum extent permissible under law, Lessee waives all claims against the Lessor for such injury or damage.

9.3 PAYMENT BY LESSOR: In the event the Lessor shall be required to pay any sum that is Lessee's responsibility or liability, Lessee shall reimburse Lessor for such payment and for reasonable expenses caused thereby.

9.4 INSURANCE: Lessee shall procure and maintain in force throughout the term hereof, at Lessee's sole cost and expense, the following insurance:

(1) Comprehensive public liability insurance indemnifying Lessor and Lessee against claims and demands for injury to or death of persons or damage to property which may be claimed to have occurred on the Leased Premises in amounts which shall be not less than One Million (\$1,000,000.00) Dollars combined single limit for bodily injury and property damage liability.

(2) Comprehensive special form of insurance for the full replacement value of the Improvements. The dollar amounts of this coverage shall be adjusted at two (2)-year intervals, beginning on the date this Lease is signed, or upon the Lessor's demand given not more often than annually, upon thirty (30) days' notice to Lessee. This adjustment to the coverage shall be equal to the adjusted building replacement cost, excluding design or permit fees, excavation, site prep, and other underground work.

(3) Workman's Compensation insurance, in the event that Lessee employs workers at the Farm, with limits no less than those imposed by law.

(4) During any construction or alteration of the Premises by Lessee, the cost of which construction or alteration is greater than \$15,000.00, Lessee shall also keep in full force and effect Builder's Risk Insurance adequately insuring the work, the materials, and equipment on the Leased Premises and in such amounts as Lessor may reasonably require insuring Lessor and Lessee as their respective interests may appear.

The insurance required herein shall be placed with insurers reasonably satisfactory to Lessor and authorized to do business in Massachusetts. All policies shall include Lessor as Additional Insured or Certificate Holder. Such insurance shall provide that it shall not be amended or canceled with respect to the additional insureds or certificate holders without ten (10) days' prior written notice to each of them. Lessee shall furnish to Lessor certificates of insurance for all insurance required to be maintained by Lessee under this Lease, together with evidence satisfactory to Lessor of the payment of all premiums for such policies, on an annual basis or as reasonably requested by Lessor. All policies shall also contain endorsements providing that they shall not be canceled, reduced in amount or coverage or otherwise modified by the insurance carrier involved without at least thirty (30) days' prior written notice to Lessee and to the Lessor. The Lessor shall be entitled to participate in the settlement or adjustment of any losses covered by such policies of insurance.

9.5 DAMAGE OR DESTRUCTION: Except as provided below, in the event of fire or other damage to the Improvements, Lessee shall take all steps necessary to ensure the repair of such damage and the restoration of the Improvements to their condition

immediately prior to the damage. All such repairs and restoration shall be completed as promptly as possible. Lessee shall also promptly take all steps necessary to ensure that the Leased Premises are safe and that the damaged Improvements do not constitute a danger to persons or property. If Lessee, using reasonable judgment and relying on professional estimates, determines either (a) that full repair and restoration is physically impossible, or (b) that the available insurance proceeds will pay for less than eighty percent (80%) of the cost of repair and restoration (provided Lessee has fulfilled all the hazard insurance requirements set forth in Section 9.4 above), then Lessee may terminate this Lease by written notice to the Lessor given not later than sixty (60) days after the event that caused the damage. However, such termination shall not be effective until ninety (90) days after the date upon which the notice is received by the Lessor. During this ninety (90)-day period, the Lessor may seek an adjustment from the insurer so as to increase the available insurance proceeds to an amount covering at least eighty percent (80%) of the cost of repair and restoration. If successful in securing such adjustment, the Lessor may render Lessee's termination notice null and void by written notice to Lessee within such forty-five (45)-day period. If the Lessor fails to nullify the termination notice in this way, then this Lease shall terminate at the expiration of the ninety (90) day period, and any insurance proceeds payable to Lessee on account of such damage shall be paid as provided below. The insurance proceeds shall be paid first to cover any expenses of collecting the proceeds. Remaining proceeds shall be paid first to a Permitted Mortgagee to the extent required by the Permitted Mortgage, with the balance then paid to the Lessee, provided that the total amount paid to the Lessee and the Permitted Mortgagee does not exceed the then applicable Town's Purchase Option Price (as of immediately prior to the damage) calculated according to the provisions of Article 10 below. The balance of such proceeds, if any, shall be paid to the Lessor.

9.6 EMINENT DOMAIN AND PUBLIC DEDICATION: In the event of a taking of the Leased Premises, either in its entirety or to such extent that the Improvements are lost or damaged beyond repair, by reason of eminent domain or other action of public authority prior to the expiration of this Lease, this Lease shall terminate as of the date Lessee is required to give up possession of the Leased Premises or Improvements, and the entire amount of any award(s) paid shall be allocated in the way described in Section 9.5 above for insurance proceeds. In the event of a taking of a portion of the Leased Premises that does not result in damage to the Improvements or substantial reduction in the usefulness or desirability of the Improvements for residential purposes, then any monetary compensation for such taking shall be allocated entirely to the Town.

In the event of a taking of a portion of the Leased Premises that results in damage to the Improvements only to such an extent that the Improvements can reasonably be restored to a residential and agricultural use consistent with this Lease, the Town may in its discretion allocate some or all the monetary compensation to enable Lessee to accomplish such a restoration. Any balance remaining after or in the absence of such allocation shall be allocated as provided above for a taking of the entire Leased Premises. Any and all proceedings brought by a party in connection with any damages as a result of any taking referred to in this Section shall be conducted at the sole expense of such party. If any provision of law requires that such proceedings be brought by or in the name of any

owner or lessee of the premises, such party shall join in such proceedings or permit the same to be brought in its name. Each party agrees to do all acts and to execute all documents that may be required to enable the other to maintain such proceedings. If the party required to join in the proceedings incurs any cost or expense in doing so, such party shall be entitled to reasonable reimbursement and this entitlement shall constitute a first charge against any award.

ARTICLE 10: Transfer, Sale, or Disposition of Improvements

10.1 INTENT: It is the understanding of the parties that the terms of this Lease, and in particular of this Article 10, are intended to preserve the affordability of the Improvements for lower-income farmers and expand access to homeownership opportunities for such households.

10.2 TRANSFERS TO ELIGIBLE PURCHASERS: Lessee may sell, transfer or otherwise dispose of its interest in the Leased Premises or the Improvements only to the Lessor, an Eligible Purchaser, or otherwise only as explicitly permitted by the provisions of this Article 10. All such sales, transfers and other dispositions shall be subject to the price limitations set forth herein. Any purported sale, transfer or other disposition done without following the procedures set forth below or in violation of such price limitations (except in the case of a sale, transfer or other disposition to a Permitted Mortgagee in lieu of foreclosure or through purchase at a foreclosure auction, subject to the terms of this Lease) shall be null and void.

10.3 TRANSFER TO LESSEE'S HEIRS: Upon receipt of notice from the executor of the decedent's estate given within ninety (90) days of the death of Lessee (or the last surviving co-owner of the Improvements) the Lessor shall, unless for good cause shown, consent to a transfer of the Improvements and an assumption of this Lease to and by one or more of the possible heirs of Lessee listed below as "a," "b," or "c" (each such party hereinafter a "Permitted Heir" and, collectively, "Permitted Heirs"), provided that such heir is an Eligible Purchaser, and provided that a Letter of Stipulation and a Letter of Acknowledgment of legal counsel (similar to those described in Article 1 of this Lease), setting forth such Permitted Heirs' review, understanding and acceptance of the terms of this Lease, are submitted to Lessor to be attached to this Lease when it is transferred to such Permitted Heirs.

a. the spouse of Lessee; or

b. the child or children of Lessee; or

c. Lessee's domestic partner who was one of two people, the other being Lessee, who maintained the same permanent residence and had a close and committed personal relationship involving shared responsibilities for each other's welfare as evidenced by financial interdependence, and having expressed the intention for their relationship to be permanent.

Any heirs, legatees or devisees of Lessee must, in addition to submitting Letters of Stipulation and Acknowledgment as provided above, demonstrate to the Town's reasonable satisfaction that they are Eligible Purchasers, or, if unable to do so, shall not be entitled to possession of the Improvements and Leased Premises and must transfer the Improvements and Leased Premises in accordance with the provisions of this Article 10.

10.4 LESSEE'S NOTICE OF INTENT TO SELL: Except in the case of a sale, transfer or other disposition to a Permitted Mortgagee in lieu of foreclosure or through purchase at a foreclosure auction, in the event that Lessee contemplates an assignment of its interest herein or a sale, transfer or other disposition of the Improvements to a third party (any of the foregoing being a "Transfer"), Lessee shall notify the Town, in writing, of such wish (the "Intent-To-Sell Notice"). Such Intent-To-Sell Notice shall include a statement as to whether Lessee wishes to recommend a prospective buyer as of the date of the Notice.

10.5 THE TOWN'S PURCHASE OPTION: Upon receipt of an Intent to Sell Notice from Lessee, the Town shall have the option to purchase the Improvements (the "Purchase Option") at the Purchase Option Price calculated as set forth below. The Purchase Option is designed to further the purpose of preserving the affordability of the Improvements for succeeding Eligible Purchasers while taking fair account of the investment by Lessee. If the Town elects to purchase the Improvements, it shall exercise the Purchase Option by notifying Lessee, in writing, of such election (the "Notice of Exercise of Option") within sixty (60) days of the receipt of the Intent-To-Sell Notice or sixty (60) days following the Town's receipt of an appraisal carried out in accordance with Section 10.9, whichever shall be the later to occur, or the Purchase Option shall expire. Having given such notice, the Town may either proceed to exercise the Purchase Option directly by purchasing the Improvements, or may assign the Purchase Option to an Eligible Purchaser, or a non-profit corporation, charitable trust, municipality, government agency or other similar entity sharing the goals described in the Recitals of the Ground Lease. The purchase (by the Town or the Town's assignee) must be completed within sixty (60) days of the Town's Notice of Exercise of Option, or Lessee may sell the Improvements as provided in Section 10.6 below. The time permitted for the completion of the purchase may be extended by mutual agreement of the parties hereto. Lessee may recommend to the Town a prospective buyer who is an Eligible Purchaser and is prepared to submit Letters of Stipulation and Acknowledgment indicating informed acceptance of the terms of this Lease. The Town may, but shall not be obligated to, accept, such recommendation from Lessee, as the Town may elect, in its sole discretion, acting through the Farm Committee.

10.6 IF PURCHASE OPTION EXPIRES: If the Purchase Option has expired or if the Town has failed to complete the purchase within the sixty (60)-day period allowed by Section 10.5 above, Lessee may Transfer the Improvements and this Lease to any Eligible Purchaser, for not more than the then applicable Purchase Option Price. If, six (6) months after (a) the expiration of the Purchase Option or the expiration of the sixty (60)-day period provided in Section 10.5 above, the Improvements still have not been Transferred, Lessee may Transfer the Improvements and this Lease, at a price determined by the market, to any party regardless of whether that party is an Eligible Purchaser, provided, however, that said party executes a lease to the Town in the form hereof

limiting resale to an Eligible Purchaser. Any portion of the purchase price in excess of applicable purchase option price shall be remitted to the Town.

10.7 THE TOWN'S POWER OF ATTORNEY TO CONDUCT SALE: In the event the Town (or its assignee) does not exercise its Purchase Option and complete the purchase of the Improvements as set forth above, and Lessee (a) is not then residing in the Improvements and (b) continues to hold the Improvements out for sale but is unable to locate a buyer and execute a binding purchase and sale agreement within one (1) year of the giving of the Intent to Sell Notice, Lessee does hereby appoint the Town its attorney in fact to seek a buyer, negotiate a reasonable price that furthers the goals set forth in this Lease; Transfer the Improvements and distribute proceeds of sale, minus the Town's costs of sale and reletting and any other sums owed the Town by Lessee.

10.8 PURCHASE OPTION PRICE: Except as provided in Section 10.6, in no event may the Improvements be Transferred for a price that exceeds the Purchase Option Price. The Purchase Option Price shall be equal to the lesser of (a) the value of the Improvements as determined by the Appraisal commissioned and conducted at the discretion of the Town as provided in 10.9 below; (b) the price calculated in accordance with the formula described in Section 10.10 below (the "Formula Price"); or (c) the Alternative Maximum defined in Section 10.10.1 below.

10.9 APPRAISAL: No later than ten (10) days after the Town's receipt of Lessee's Intent-To-Sell Notice, a market valuation of the Leased Premises and the Improvements (the "Appraisal") may be commissioned at the discretion of the Town to be performed by a mutually acceptable and duly licensed appraiser. If the parties hereto cannot agree to a mutually acceptable appraiser, the Town may invoke arbitration pursuant to Article 13 and the third arbitrator (as that term is used in Article 13) shall be an experienced real estate appraiser who shall conduct the Appraisal. The Town shall commission and pay the cost of such Appraisal. The Appraisal shall be conducted by analysis and comparison of comparable properties as though title to Land and Improvements were held in fee simple absolute, disregarding the restrictions of this Lease on the use of the Land and the Transfer of the Improvements. The Appraisal shall state the values contributed by the Land and by the Improvements as separate amounts. Copies of the Appraisal are to be provided to both parties.

10.10 CALCULATION OF THE FORMULA PRICE: The Formula Price shall be equal to the Base Price (the Total Development Value, plus the Added Value) plus the Inflation Adjustment, calculated as described below.

- **Base Price:** The parties agree that the Base Price is the Total Development Value plus the Added Value, if applicable.
- **Total Development Value:** The parties agree that the Total Development Value is Lessee's Purchase Price for the Improvements existing on the Leased Premises as of the commencement of the term of this Lease plus the cost of the Renovations, as described in Section 7.4 hereof.

- **Added Value:** The parties agree that Added Value shall be recognized if Lessee has increased the number of bedrooms in the Improvements, or otherwise altered or added to the Improvements in a manner which improves the market value thereof, as determined in the sole discretion of the Farm Committee, with the aid of a real estate appraiser, the result of which being that a Certificate of Added Value has been issued by in accordance with Section 7.3 hereof.

- **Inflation Adjustment:** The parties agree that the Inflation Adjustment is defined as the sum of two parts: (1) The Total Development Value multiplied by 3% per year from the date of the Certificate of Total Development Value, and (2) the Added Value multiplied by 3% per year from the date of the Certificate of Added Value.

10.10.1 **ALTERNATIVE MAXIMUM:** Notwithstanding the foregoing, the maximum for which the Lessee is permitted to sell the Improvements shall be that which would be affordable by an Eligible Purchaser with a family size appropriate to the number of bedrooms in said Leased Premises as determined by the Farm Committee at the time of resale.

10.11 **NEW LEASE:** An Eligible Purchaser who purchases the Improvements in accordance with the provisions of this Article 10 shall enter into a new Lease from the Lessor, which new Lease shall be substantially the same as this Lease in the rights, benefits and obligations assigned to Lessee and the Lessor.

10.12 **DEFERRED MAINTENANCE AND CONDITION OF IMPROVEMENTS AT TIME OF SALE:** Lessee acknowledges and agrees that it is obligated to maintain the Improvements in good, safe and habitable condition as outlined in Section 4.2 and 7.6 throughout the term of this Lease. At the time of any Transfer permitted hereunder, Lessee agrees to Transfer the Improvements in good, safe and habitable condition. The Town may elect to use a prospective buyer's mortgage lender's requirements as the basis for identifying deferred maintenance problems, if any, that must be corrected prior to sale of the Improvements. Lessee shall complete, or cause to be completed, all required repairs identified by the Town or the mortgage lender's requirements, as may be applicable. All such work must be completed in a good and workerlike manner in accordance with all applicable laws and regulations prior to the closing. Lessee shall bear the full cost of said repairs. All costs that cannot be paid in advance by Lessee shall be paid from Lessee's proceeds at closing.

10.13 **MONITORING FEE:** The Town shall be entitled to a fee of one-half of one percent of the established sale price of the Improvements for the services performed monitoring the resale and transfer of this Lease. This fee shall be paid by the buyer of Lessee's interest as a closing cost at the time of closing.

ARTICLE 11: Assignment and Sublease

Except as otherwise provided in Article 8 (including Exhibit J) and Article 10, Lessee shall not assign, sublease, sell, or otherwise transfer or convey any of Lessee's rights under this Lease without the prior written consent of the Town. Lessee agrees that the Town shall have broad and full discretion to withhold such consent in order to further the mutual purposes and goals set forth in this Lease.

ARTICLE 12: Default

12.1 MONETARY DEFAULT BY LESSEE: It shall be an event of default if Lessee fail to pay any charges required by the terms of this Lease and such failure is not cured by Lessee or a Permitted Mortgagee within thirty (30) days after notice of such failure is given by the Town or Lessor to Lessee and Permitted Mortgagee. However, if Lessee shall make a good faith partial payment of at least two thirds (2/3) of the amount owed during such initial thirty (30)-day period, then such period shall be extended one additional thirty (30)-day period. The full amount of the delinquent Ground Lease Fee or other charges must be paid at the end of this additional period. This paragraph may be used to extend payment deadlines no more than once in every twelve (12)-month period.

12.2 NON MONETARY DEFAULT BY LESSEE: It shall be an event of default if Lessee fails to abide by any other material term or condition in this Lease, and such failure is not cured by Lessee or a Permitted Mortgagee within sixty (60) days after notice of such failure is given by the Town or Lessor to Lessee and Permitted Mortgagee. However, in the case where Lessee or Permitted Mortgagee has commenced to cure such default within such sixty (60)-day period and is continuing such cure with all due diligence but cannot by the exercise of due diligence cure such default within such period, such period shall be extended for such additional period as may be reasonably required under the circumstances to complete such cure.

12.3 DEFAULT BY LESSEE RESULTING FROM JUDICIAL PROCESS: It shall be an event of default if the estate hereby created is taken on execution or by other process of law, or if Lessee is judicially declared bankrupt or insolvent according to law, or if any assignment is made of the property of Lessee for the benefit of creditors, or if a receiver, trustee in involuntary bankruptcy or other similar officer is appointed to take charge of any substantial part of Lessee's property by a court of competent jurisdiction, or if a petition is filed for the reorganization of Lessee under any provisions of the Bankruptcy Act now or hereafter enacted, or if Lessee files a petition for such reorganization, or for arrangements under any provision of the Bankruptcy Act now or hereafter enacted and providing a plan for a debtor to settle, satisfy or extend the time for payment of debts.

12.4 TERMINATION: In the case of any of the events of default described above (each, hereinafter, an "Event of Default"), the Lessor may terminate this Lease and initiate summary proceedings against Lessee. Pursuant to such proceedings, without demand or notice, the Lessor may enter any part of the Leased Premises and repossess the entire Leased Premises, and expel Lessee and those claiming rights through Lessee and remove their effects without being guilty of any manner of trespass, and without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of

covenant. If this Lease is terminated by the Lessor, or if the Town or Lessor reenters the Leased Premises pursuant to an Event of Default, Lessee agrees to pay and be liable for any damages which may be due or sustained prior to or in connection with such termination or reentry, and all reasonable costs, fees and expenses (including, without limitation, reasonable attorneys' fees) incurred by the Town and/or Lessor in pursuit of its remedies under this Lease.

ARTICLE 13: General Provisions

13.1 NOTICES: Whenever this Lease requires either party to give notice to the other, the notice shall be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the party at the address set forth below, or such other address designated by like written notice.

All notices, demands and requests shall be effective upon being deposited in the United States Mail or, in the case of personal delivery, upon actual receipt.

13.2 SEVERABILITY AND DURATION OF: If any part of this Lease is unenforceable or invalid, such material shall be read out of this Lease and shall not affect the validity of any other part of this Lease or give rise to any cause of action of Lessee or Lessor against the other, and the remainder of this Lease shall be valid and enforced to the fullest extent permitted by law. Without limiting the generality of the foregoing, it is the intention of the parties that their respective options to purchase and all other rights under this Lease shall continue in effect for the full term of this Lease and any renewal thereof, and such options and other rights shall be considered to be coupled with an interest. Further, the parties intend such options and other rights to be ones arising out of a non-donative transfer within the meaning of M.G.L. c. 184A, Section 4, as the same is now in effect and therefore not subject to any limitations otherwise imposed by said M.G.L. c. 184A. In the event any such option or right shall be construed to be subject to any rule of law limiting the duration of such option or right, the time period for the exercise of such option or right shall be construed to expire twenty (20) years after the death of the first survivor of the following persons: the children living as of the date hereof of any employees of the Town.

13.3 RIGHT OF FIRST REFUSAL IN LIEU OF OPTION: If the provisions of the purchase option set forth in Article 10 of this Lease shall become unenforceable for any reason (other than termination following the exercise of rights of a Permitted Mortgagee under its mortgage pursuant to Section 8.3 above) the Town shall nevertheless have a right of first refusal to purchase the Improvements at the purchase price made by a bona fide purchaser to Lessee. This right shall be as specified in the attached Exhibit K. Any sale or transfer contrary to this Section, when applicable, shall be null and void.

13.4 WAIVER: A waiver by the Lessor at any given time of any term or condition of this Lease, or the failure of the Lessor to take action with respect to any breach of any such term or condition, shall not be deemed to be a waiver of such term or condition with regard to any subsequent breach of such term or condition, or of any other term or

condition of this Lease. The Lessor may grant waivers in the terms of this Lease, but such waivers must be in writing and signed by the Lessor before being effective. The subsequent acceptance of Ground Lease Fee payments by the Town shall not be deemed to be a waiver of any preceding breach by Lessee of any term or condition of this Lease, other than the failure of Lessee to pay the particular Ground Lease Fee so accepted, regardless of the Town's knowledge of such preceding breach at the time of acceptance of such Ground Lease Fee payment.

13.5 THE LESSOR'S RIGHT TO PROSECUTE OR DEFEND: The Lessor shall have the right, but shall be under no obligation, to prosecute or defend, in its own or Lessee's name, any actions or proceedings appropriate to the protection of its title to, and Lessee's interest in, the Leased Premises. Whenever requested by the Lessor, Lessee shall give the Lessor all reasonable aid in any such action or proceeding.

13.6 CONSTRUCTION: Whenever in this Lease a pronoun is used it shall be construed to represent either the singular or the plural, masculine or feminine, as the case shall demand.

13.7 CAPTIONS AND TABLE OF CONTENTS: The captions and table of contents appearing in this Lease are for convenience only, and are not a part of this Lease and do not in any way limit or amplify the terms or conditions of this Lease.

13.8 PARTIES BOUND: This Lease sets forth the entire agreement between the parties hereto with respect to the leasing of the Leased Premises; it is binding upon and inures to the benefit of these parties and, in accordance with the provisions of this Lease, their respective successors in interest. This Lease may be altered or amended only by written notice executed by the parties or their legal representatives or, in accordance with the provisions of this Lease, successors in interest.

13.9 GOVERNING LAW: This Lease shall be interpreted in accordance with and governed by the laws of Massachusetts. The language in all parts of this Lease shall be, in all cases, construed according to its fair meaning and not strictly for or against either party.

13.10 RECORDING: The parties agree that a true and complete copy of this Lease including exhibits and any subsequent amendments hereto, shall be recorded at the Registry of Deeds in the County where the Improvements are located.

13.11 LESSEES: Notwithstanding anything herein to the contrary, Lessee under this Lease shall at all times be one or more natural persons and any transfer by Lessee of its interest hereunder to a corporation, trust, partnership or any other entity, other than to a Permitted Mortgagee in exercise of its rights permitted in this Lease, in violation of the foregoing prohibition shall be deemed null and void.

13.12 NO BROKERAGE: Lessee warrants that it has not dealt with any broker in connection with the consummation of this Lease, and in the event any claim is made

against the Lessor relative to dealing with any brokers, Lessee shall defend the claim against the Lessor and save harmless and indemnify the Lessor on account of loss, cost or damage which may arise by reason of any such claim.

13.13 COMMITTEE DESIGNATION: In the event that any committee of the Town of Chilmark named in this lease ceases to exist, the Board of Selectmen shall designate another committee to replace such defunct committee; and such replacement committee shall hold all of the powers and functions of the defunct committee as stated herein.

[remainder of page intentionally blank; signatures to follow]

IN WITNESS WHEREOF, the parties have executed this Lease at _____ on the day and year first above written.

Lessor:

The Town of Chilmark

By its Board of Selectmen,

Frank M. Fenner, Jr., Chairman

Warren M. Doty

Jonathan E. Mayhew

Lessor:

**Martha's Vineyard Lank Bank
Commission:**

Lessee:

COMMONWEALTH OF MASSACHUSETTS

County of Dukes County: is

On this ___ day of _____, 20___, before me, the undersigned notary public, personally appeared Frank M. Fenner, Jr., Chairman of the Board of Selectmen of the Town of Chilmark, proved to me through satisfactory evidence of identification, which was (circle one) personal knowledge of identity of the principal/passport or drivers license bearing photographic image of principal/ other _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public

My commission expires:

COMMONWEALTH OF MASSACHUSETTS

County of Dukes County: is

On this ___ day of _____, 20___, before me, the undersigned notary public, personally appeared _____, _____ of the Martha's Vineyard Land Bank Commission, proved to me through satisfactory evidence of identification, which was (circle one) personal knowledge of identity of the principal/passport or drivers license bearing photographic image of principal/ other _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public

My commission expires:

COMMONWEALTH OF MASSACHUSETTS

County of Dukes County: is

On this ____ day of _____, 20____, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was (circle one) personal knowledge of identity of the principal/passport or drivers license bearing photographic image of principal/ other _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he)(she) signed it voluntarily for its stated purpose.

Notary Public

My commission expires: